



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

TEXAS ORTHOPEDIC HOSPITAL
3701 KIRBY DR STE 1288
HOUSTON TX 77098-3916

Respondent Name

LM INSURANCE CORP

Carrier's Austin Representative Box

Box Number 1

MFDR Tracking Number

M4-10-0666-01

MFDR Date Received

September 29, 2009

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "it is the position of the Provider that all charges relating to the admission of this claimant are due and payable and not subject to the improper reductions taken by the carrier in this case. The carrier's position is incorrect and in violation of the Hospital Facility Fee Guideline for outpatient services."

Amount in Dispute: \$5,089.65

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The fee schedule payment was paid per OPPS at 200% Medicare allowable. Our position is the same for the facility payment per TX fee schedule. The issue appears to be the PPO discount which reduced the payment to 8,993.42. The provider should contact the PPO provider to resolve this issue. . . Liberty Mutual believes that Texas Orthopedic Hospital has been appropriately reimbursed for services rendered. . ."

Response Submitted by: Liberty Mutual, 2875 Browns Bridge Road, Gainesville, Georgia 30504

SUMMARY OF FINDINGS

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
September 29, 2008 to September 30, 2008	Outpatient Hospital Services	\$5,089.65	\$2,779.30

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.403, titled *Hospital Facility Fee Guideline – Outpatient*, sets out the reimbursement guidelines for facility services provided in an outpatient acute care hospital.
3. 28 Texas Administrative Code §133.4 requires written notification to health care providers regarding contractual agreements for informal and voluntary networks.

4. The services in dispute were reduced/denied by the respondent with the following reason codes:
- X936 – CPT OR HCPC IS REQUIRED TO DETERMINE IF SERVICES ARE PAYABLE. (X936)
 - Z547 – THIS BILL WAS REVIEWED IN ACCORDANCE WITH YOUR CONTRACT WITH YOUR FEE FOR SERVICE CONTRACT WITH FIRST HEALTH. FOR QUESTIONS REGARDING THIS ANALYSIS PLEASE CALL (800) 937-6824. THIS REIMBURSEMENT MAY REFLECT PAYMENT AT RATES LESS THAN YOUR DISCOUNTED CONTRACT RATE IN ACCORDANCE WITH YOUR PPO NETWORK CONTACT AND OUR ACCESS AGREEMENT WITH THEM. (Z547)
 - Z710 – THE CHARGE FOR THIS PROCEDURE EXCEEDS THE FEE SCHEDULE ALLOWANCE. (Z710)
 - PA – FIRST HEALTH
 - P303 – THIS SERVICE WAS REVIEWED IN ACCORDANCE WITH YOUR CONTRACT. (P303)
 - Z652 – RECOMMENDATION OF PAYMENT HAS BEEN BASED ON A PROCEDURE CODE WHICH BEST DESCRIBES SERVICES RENDERED. (Z652)
 - Z345 – LEFT SIDE. (Z345)
 - U849 – THIS MULTIPLE PROCEDURE WAS REDUCED 50%% ACCORDING TO FEE SCHEDULE OR USUAL AND CUSTOMARY GUIDELINES. (U849)
 - U634 – PROCEDURE CODE NOT SEPARATELY PAYABLE UNDER MEDICARE AND OR FEE SCHEDULE GUIDELINES. (U634)

Issues

1. Are the disputed services subject to a contractual agreement between the parties to this dispute?
2. What is the applicable rule for determining reimbursement for the disputed services?
3. What is the recommended payment amount for the services in dispute?
4. Is the requestor entitled to reimbursement?

Findings

1. The insurance carrier reduced or denied disputed services with reason codes P303 – "THIS SERVICE WAS REVIEWED IN ACCORDANCE WITH YOUR CONTRACT. (P303)"; PA – "FIRST HEALTH"; and Z547 – "THIS BILL WAS REVIEWED IN ACCORDANCE WITH YOUR CONTRACT WITH YOUR FEE FOR SERVICE CONTRACT WITH FIRST HEALTH. FOR QUESTIONS REGARDING THIS ANALYSIS PLEASE CALL (800) 937-6824. THIS REIMBURSEMENT MAY REFLECT PAYMENT AT RATES LESS THAN YOUR DISCOUNTED CONTRACT RATE IN ACCORDANCE WITH YOUR PPO NETWORK CONTACT AND OUR ACCESS AGREEMENT WITH THEM. (Z547)." Review of the submitted information found insufficient documentation to support that the disputed services were subject to a contractual fee arrangement between the parties to this dispute. Nevertheless, on October 7, 2010, the Division requested the respondent to provide a copy of the referenced contract as well as documentation to support notification to the healthcare provider, as required by 28 Texas Administrative Code §133.4, that the insurance carrier had been given access to the contracted fee arrangement. Review of the submitted information finds that the documentation does not support notification to the healthcare provider in the time and manner required that the insurance carrier, Liberty Mutual, had been granted access to the provider's contractual fee arrangement. The Division concludes that, pursuant to §133.4(g), the insurance carrier is not entitled to pay the health care provider at a contracted fee. Consequently, per §133.4(h), the disputed services will be reviewed for payment in accordance with applicable Division rules and fee guidelines.
2. This dispute relates to facility services performed in an outpatient hospital setting with reimbursement subject to the provisions of 28 Texas Administrative Code §134.403, which requires that the reimbursement calculation used for establishing the maximum allowable reimbursement (MAR) shall be the Medicare facility specific amount, including outlier payment amounts, determined by applying the most recently adopted and effective Medicare Outpatient Prospective Payment System (OPPS) reimbursement formula and factors as published annually in the Federal Register with the application of minimal modifications as set forth in the rule. Per §134.403(f)(1), the sum of the Medicare facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by 200 percent, unless a facility or surgical implant provider requests separate reimbursement of implantables. Per §134.403(f)(1), the sum of the Medicare facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by 200 percent, unless separate reimbursement of implantables is requested in accordance with subsection (g). Subsection 134.403(g)(1) requires that a provider billing separately for an implantable shall include with the billing a certification that the amount billed represents the actual cost (net amount, exclusive of rebates and discounts) for the implantable. Review of the submitted documentation finds no clear indication to the insurance carrier that separate reimbursement of implantables was requested. No request for separate reimbursement was found with the initial billing documentation. Although implantables are mentioned in the request for reconsideration letter, it is within the context of requesting reimbursement according to an alleged contracted fee arrangement. No request was found for separate reimbursement of implantables in regards to the provisions of 28 Texas Administrative Code §134.403. Moreover, review of the submitted documentation finds no certification of the actual cost of the implantables as required by §134.403(g)(1). The Division concludes that the facility has not requested separate reimbursement of implantables in accordance with subsection (g); therefore, separate reimbursement of implantables cannot be recommended. The applicable rule for reimbursement is §134.403(f)(1)(A). Accordingly, the Medicare facility

specific reimbursement including outlier payments shall be multiplied by 200 percent.

3. Under the Medicare Outpatient Prospective Payment System (OPPS), each billed service is assigned an Ambulatory Payment Classification (APC) based on the procedure code used, the supporting documentation and the other services that appear on the bill. A payment rate is established for each APC. Depending on the services provided, hospitals may be paid for more than one APC per encounter. Payment for ancillary and supportive items and services, including services that are billed without procedure codes, is packaged into payment for the primary service. A full list of APCs is published quarterly in the OPPS final rules which are publicly available through the Centers for Medicare and Medicaid Services (CMS) website. Reimbursement for the disputed services is calculated as follows:
- Procedure code J7120 has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
 - Procedure code C1713 has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
 - Procedure code 29827 has a status indicator of T, which denotes a significant procedure subject to multiple-procedure discounting. The highest paying status T procedure is paid at 100%; all others are paid at 50%. This procedure is paid at 100%. These services are classified under APC 42, which, per OPPS Addendum A, has a payment rate of \$2,911.27. This amount multiplied by 60% yields an unadjusted labor-related amount of \$1,746.76. This amount multiplied by the annual wage index for this facility of 0.9997 yields an adjusted labor-related amount of \$1,746.24. The non-labor related portion is 40% of the APC rate or \$1,164.51. The sum of the labor and non-labor related amounts is \$2,910.75. Per 42 Code of Federal Regulations §419.43(d) and Medicare Claims Processing Manual, CMS Publication 100-04, Chapter 4, §10.7.1, if the total cost for a service exceeds 1.75 times the OPPS payment and also exceeds the annual fixed-dollar threshold of \$1,575, the outlier payment is 50% of the amount by which the cost exceeds 1.75 times the OPPS payment. Per the OPPS Facility-Specific Impacts file, CMS lists the cost-to-charge ratio for this provider as 0.1731. This ratio multiplied by the billed charge of \$1,734.25 yields a cost of \$300.20. The total cost of all packaged items is allocated proportionately across all separately paid OPPS services based on the percentage of the total APC payment. The APC payment for these services of \$2,910.75 divided by the sum of all APC payments is 49.45%. The sum of all packaged costs is \$2,869.48. The allocated portion of packaged costs is \$1,418.93. This amount added to the service cost yields a total cost of \$1,719.13. The cost of these services exceeds the annual fixed-dollar threshold of \$1,575. The amount by which the cost exceeds 1.75 times the OPPS payment is \$0.00. The total Medicare facility specific reimbursement amount for this line is \$2,910.75. This amount multiplied by 200% yields a MAR of \$5,821.50.
 - Procedure code 29826 has a status indicator of T, which denotes a significant procedure subject to multiple-procedure discounting. The highest paying status T procedure is paid at 100%; all others are paid at 50%. This procedure is paid at 50%. These services are classified under APC 42, which, per OPPS Addendum A, has a payment rate of \$2,911.27. This amount multiplied by 60% yields an unadjusted labor-related amount of \$1,746.76. This amount multiplied by the annual wage index for this facility of 0.9997 yields an adjusted labor-related amount of \$1,746.24. The non-labor related portion is 40% of the APC rate or \$1,164.51. The sum of the labor and non-labor related amounts is \$2,910.75. The cost of these services does not exceed the annual fixed-dollar threshold of \$1,575. The outlier payment amount is \$0. The total Medicare facility specific reimbursement amount for this line, including multiple-procedure discount, is \$1,455.38. This amount multiplied by 200% yields a MAR of \$2,910.76.
 - Procedure code 29828 has a status indicator of T, which denotes a significant procedure subject to multiple-procedure discounting. The highest paying status T procedure is paid at 100%; all others are paid at 50%. This procedure is paid at 50%. These services are classified under APC 42, which, per OPPS Addendum A, has a payment rate of \$2,911.27. This amount multiplied by 60% yields an unadjusted labor-related amount of \$1,746.76. This amount multiplied by the annual wage index for this facility of 0.9997 yields an adjusted labor-related amount of \$1,746.24. The non-labor related portion is 40% of the APC rate or \$1,164.51. The sum of the labor and non-labor related amounts is \$2,910.75. The cost of these services does not exceed the annual fixed-dollar threshold of \$1,575. The outlier payment amount is \$0. The total Medicare facility specific reimbursement amount for this line, including multiple-procedure discount, is \$1,455.38. This amount multiplied by 200% yields a MAR of \$2,910.76.
 - Procedure code J0690 has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
 - Procedure code J0690, date of service September 30, 2008, has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
 - Procedure code J2405 has a status indicator of K, which denotes nonpass-through drugs and biologicals

paid under OPPS with separate APC payment. These services are classified under APC 768, which, per OPPS Addendum A, has a payment rate of \$0.26. This amount multiplied by 60% yields an unadjusted labor-related amount of \$0.16. This amount multiplied by the annual wage index for this facility of 0.9997 yields an adjusted labor-related amount of \$0.16. The non-labor related portion is 40% of the APC rate or \$0.10. The sum of the labor and non-labor related amounts is \$0.26 multiplied by 4 units is \$1.04. Per 42 Code of Federal Regulations §419.43(f) and Medicare Claims Processing Manual, CMS Publication 100-04, Chapter 4, §10.7.1, drugs, biologicals, and items and services paid at charges adjusted to cost are not eligible for outlier payments. The total Medicare facility specific reimbursement amount for this line is \$1.04. This amount multiplied by 200% yields a MAR of \$2.08.

- Procedure code J2405, date of service September 30, 2008, has a status indicator of K, which denotes nonpass-through drugs and biologicals paid under OPPS with separate APC payment. These services are classified under APC 768, which, per OPPS Addendum A, has a payment rate of \$0.26. This amount multiplied by 60% yields an unadjusted labor-related amount of \$0.16. This amount multiplied by the annual wage index for this facility of 0.9997 yields an adjusted labor-related amount of \$0.16. The non-labor related portion is 40% of the APC rate or \$0.10. The sum of the labor and non-labor related amounts is \$0.26 multiplied by 4 units is \$1.04. Per 42 Code of Federal Regulations §419.43(f) and Medicare Claims Processing Manual, CMS Publication 100-04, Chapter 4, §10.7.1, drugs, biologicals, and items and services paid at charges adjusted to cost are not eligible for outlier payments. The total Medicare facility specific reimbursement amount for this line is \$1.04. This amount multiplied by 200% yields a MAR of \$2.08.
- Procedure code J0735 has a status indicator of K, which denotes nonpass-through drugs and biologicals paid under OPPS with separate APC payment. These services are classified under APC 935, which, per OPPS Addendum A, has a payment rate of \$62.78. This amount multiplied by 60% yields an unadjusted labor-related amount of \$37.67. This amount multiplied by the annual wage index for this facility of 0.9997 yields an adjusted labor-related amount of \$37.66. The non-labor related portion is 40% of the APC rate or \$25.11. The sum of the labor and non-labor related amounts is \$62.77. Per 42 Code of Federal Regulations §419.43(f) and Medicare Claims Processing Manual, CMS Publication 100-04, Chapter 4, §10.7.1, drugs, biologicals, and items and services paid at charges adjusted to cost are not eligible for outlier payments. The total Medicare facility specific reimbursement amount for this line is \$62.77. This amount multiplied by 200% yields a MAR of \$125.54.
- Procedure code J2765, date of service September 30, 2008, has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
- Procedure code J3010 has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.
- Procedure code G0378, date of service September 30, 2008, has a status indicator of N, which denotes packaged items and services with no separate APC payment; payment is packaged into the reimbursement for other services, including outliers.

4. The total allowable reimbursement for the services in dispute is \$11,772.72. This amount less the amount previously paid by the insurance carrier of \$8,993.42 leaves an amount due to the requestor of \$2,779.30. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$2,779.30.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$2,779.30, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

Signature

Grayson Richardson
Medical Fee Dispute Resolution Officer

June 14, 2013
Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.